



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Pristine, on 29 January 2013
Ref. No.: RK360 /13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI108/12

Applicant

Hazir Kadriu

**Request for constitutional review of the Judgment of the Supreme Court of the
Republic of Kosovo A. no. 212/2012 of 24 May 2012**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Hazir Kadriu, with permanent residence in Prishtina.

Challenged decision

2. The challenged decision of the public authority which has allegedly violated the rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: "the Constitution") is the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 212/2012 of 24 May 2012 (hereinafter: the Supreme Court), which the Applicant received on 25 August 2012.

Subject matter

3. The subject matter of the Referral filed with the Constitutional Court of the Republic of Kosovo (hereinafter: "the Court") is the constitutional review of the Judgment of the Supreme Court A. no. 212/2012 of 24 May 2012 and relates to the right to disability pension.

Legal Basis

4. Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: the Law) and Rule 28 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Applicant's complaint

5. The Applicant complains that the Medical Committees of the Ministry of Labor and Social Welfare (hereinafter: MLSW) have unlawfully rejected his "right to disability pension" even though the Applicant claims that he had met the criteria for such a pension, whereas, the Supreme Court by Judgment A. no. 212/2012 of 24 May 2012, in rejecting his lawsuit in relation to this matter allegedly violated his constitutionally guaranteed rights..

Proceedings before the Court

6. On 31 October 2012, the Court received the Referral submitted by Mr. Hazir Kadriu and registered it under KI 108/12.
7. On 5 November 2012, the President, by decision GJR. 108/12 appointed Judge Arta Rama – Hajrizi as Judge Rapporteur. The same day, the President, by decision KSH. 108/12 appointed the members of the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović (member) and Prof. dr. Enver Hasani (member).
8. On 5 December 2012, the Court notified the Applicant, as well as the Supreme Court of the registration of the Referral.
9. On 18 January 2013, the Review Panel after having considered the report of the Judge Rapporteur made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

10. Ministry of Labor and Social Welfare (hereinafter: MLSW), respectively the Pensions Administration Department of the Republic of Kosovo (hereinafter: PADK) by decision No. dos. 5089422 of 8 June 2011 had rejected the Applicant's right to benefit the disability pension.

11. Against the decision of PADK No. dos. 5089422 of 8 June 2011 the Applicant filed a lawsuit with the Supreme Court of the Republic of Kosovo. The Applicant had stated in his lawsuit that the medical committees did not take into consideration the fact that his health condition is very grave, because he is not able to work and that the evidence presented by him was not taken into consideration by the administrative bodies, which is why the factual situation was not completely established, as a result, according to the Applicant, the material law was applied to his detriment.
12. On 24 May 2011, the Supreme Court issued Judgment A. no. 212/2012 and rejected the lawsuit filed against the MLSW, respectively PADK with No. dos. 5089422 of 8 June 2011. The Supreme Court had concluded that the administrative bodies had correctly applied the provision of Article 3 of the Law 2003/23 on the Disability Pensions in Kosovo, due to the fact that the committee had determined that the Applicant does not meet the legal criteria for the recognition of the right to benefit the disability pension.

Applicant's allegations

13. The Applicant alleges that the Supreme Court by Judgment A. no. 212/2012 of 24 May 2012 by finally not recognizing his status as a disabled person has committed a constitutional violation of his rights.

Assessment of admissibility of the Referral

14. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
15. In relation to that, the Court refers to rule 36.1 item (c) of the Rules of Procedure which clearly provides:

*“(1) The Court may only deal with Referrals if:
c) the referral is not manifestly ill-founded.”*
16. The Court notes that the Applicant has not specified under which constitutional provision his rights have been violated (see, Article 48 of the Law on the Constitutional Court), but from case file it is clearly understood that the Applicant is complaining about the right to disability pension.
17. The Court finds that in Constitution of the Republic of Kosovo the right to pension is referred to only in Article 105 and 109 of the Constitution, namely with reference to the mandate and reappointment process of Judges and Prosecutors “until retirement according to law”. Those articles do not provide whether a citizen or an official is entitled to pension.
18. The only Constitutional provision which refers to pensions is paragraph 2 of article 51 [Health and Social Protection] of the Constitution, which provides that “Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law.” It does not provide that the citizen is entitled to pension or it does not stipulate how a person can qualify for pension.
19. The social insurance related to “disability, unemployment and old age” is regulated by law: In this present case the issue of the disability pension is regulated by Law No. 2003/23 On Disability Pensions in Kosovo adopted by the Assembly of Kosovo on 6 November 2003.

20. The application procedure and the fulfillment of the criteria for benefiting this right is set forth in this Law as is the right to appeal the decision when the parties are not satisfied with the decisions of the public authorities regarding their claims.
21. The Applicant has failed to prove that the Supreme Court issued a decision in violation of his constitutional rights. The Supreme Court in Judgment A. no. 212/2012 of 24 May 2012 found that the decisions of the Administrative Committees in this case were lawful.
22. The Constitutional Court is not a fact finding Court and in this case wishes to emphasize that establishing the correct and complete factual situation is in the full jurisdiction of regular courts and in this case of administrative bodies as well. The Court's role is solely to ensure compliance with the rights guaranteed by the Constitution, therefore it cannot act as a "fourth instance court", (*see mutatis mutandis, i.a., Akdivar versus Turkey, 16 September 1996, R.J.D, 1996-IV, par. 65*).
23. The Court concludes that there is nothing in the Referral that shows that the Supreme Court, respectively the committees of the MLSW in examining the case, lacked impartiality or that the review proceedings in the case were unfair. The mere fact that the Applicants are not satisfied with the outcome of the case, cannot serve them as a right to file an arguable claim on the violation of the constitutionally guaranteed rights (*see mutatis mutandis, Judgment ECHR Appl. No. 5503/02, Meztur-Tiszazugi Tarsulat versus Hungary, Judgment of 26 July 2005*).
24. Based on all the foregoing, the Court considers that the Applicant has not sufficiently justified his allegation on a violation of any constitutional right, therefore, pursuant to Rule 36.2 item (b) and (d) the Referral is considered as manifestly ill-founded.
25. Consequently, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56.2 of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36.2 (b) and (d), Rule 56.2 of the Rules of Procedure, on 18 January 2013, unanimously

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur


Arta Rama-Hajrizi



President of the Constitutional Court


Prof. Dr. Enver Hasani